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TO RUEHC/SECSTATE WASHDC 7496
INFO RUCNCOM/EC CARICOM COLLECTIVE
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UNCLAS SECTION 01 OF 02 BRIDGETOWN 000360

SENSITIVE
SIPDIS

STATE FOR EB/IFD/OIA FOR HEATHER GOETHERT, KIMBERLY BUTLER
L/CID FOR PATRICK PEARSALL

E.O. 12958: N/A
TAGS: CASC EINV KIDE OPIC PGOV
SUBJECT: 2009 EXPROPRIATION REPORT: ANTIGUA AND BARBUDA

REF: STATE 049477

THIS CABLE IS SENSITIVE, BUT UNCLASSIFIED. PLEASE PROTECT
ACCORDINGLY.

Summary

¶1. (SBU) The United States Government is aware of one (1) claim of a United States person that may be outstanding against the Government of Antigua and Barbuda (GOAB) End Summary.

Claimant Designation

¶2. (U) Claimant A

Date of Expropriation

¶2. (U) 2002

Cse History

¶3. (SBU) In December 2001, Claimant A (a holding company comprise of 98 percent U.S. and 2 per cent Canadian shareholders) requested that Embassy Bridgetown interven with the GOAB to halt the expropriation of HalfMoon Bay (HMB), a 110-acre beachfront property. Despite Post interventions with the GOAB Prime Minister (PM), the Permanent Secretary, and the Miister of Tourism, the expropriation was approved y Parliament on January 11, 2002.

¶4. (SBU) Accoding to the GOAB, the owner's failure to re-open the resort property, which had been severely damaged by Hurricane Luis in 1995, was depriving Antiguans of badly needed tourism revenue. The GOAB also alleged that Claimant A owed back taxes to the GOAB and severance pay to 150 workers when the hotel was closed in 1995. Claimant A acknowledged liabilities, totaling less than \$200,000 on a property estimated by Claimant A to be worth over \$32 million, but alleged that the GOAB obstructed its repeated efforts to finance the restoration of the property since 1995, and refused to meet with lenders since 1999. Claimant A alleged that its prospective lenders required a letter from the GOAB confirming that the government did not intend to expropriate the property.

¶5. (SBU) Claimant A filed an injunction in January 2002 alleging abuse of power on the part of the GOAB. Although the courts denied the GOAB's application to strike out the judicial review, the GOAB appealed this decision. The GOAB

also stated on the record that Claimant A would not be evicted from the property until the court proceedings were finalized. The Eastern Caribbean Court of Appeal upheld a lower court's decision that refused to bar the GOAB from expropriating the Half Moon Bay Resort. Claimant A subsequently requested and was granted leave to appeal to the Privy Council (the final court of appeal) on May 26, 2003.

¶ 16. (SBU) On November 2, 2004, Prime Minister Spencer told then U.S. Ambassador Mary Kramer that they remained committed to ceasing litigation and returning the property, but sought cooperation and flexibility from Claimant A in arranging for its return. On July 18, 2005, the GOAB passed an Act of Parliament returning the property under three conditions: 1) Claimant A must drop all legal action against the GOAB; 2) Claimant A must sign an indemnity exempting the GOAB from future legal action; and 3) Claimant A must pledge to redevelop the property. In an October 17, 2005, letter to the GOAB, Claimant A rejected the parliamentary offer and proposed mediation as an alternative, which the GOAB rejected.

¶ 17. (SBU) On February 16, 2006, Claimant A met with the Deputy Chief of Mission and discussed plans to pursue the Privy Council appeal - which had been put on hold since 2003 in hopes of a negotiated settlement.

¶ 18. (SBU) On April 27, 2006, Claimant A's lawyer met again at the State Department where Claimant A's lawyer submitted a draft proposal to resolve the case based on the parliamentary measure passed on July 18, 2005. The lawyer's proposal was as follows: Upon receiving clear title to the property, Claimant A pledges to: 1) drop all legal action against the

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GOAB; 2) indemnify the GOAB against future legal action; and 3) promise to redevelop the property. The primary difference between this proposal and the GOAB proposal of July 18, 2005, is that the GOAB must first return clear title of the property to Claimant A before Claimant A takes any action.

¶ 19. (SBU) On May 16, 2006, Claimant A's attorney formally presented the proposal in a letter addressed to both Ambassador Kramer and Assistant Secretary Shannon. On September 14, Claimant A's attorney presented the GOAB with a draft Memorandum of Understanding based on this proposal. On September 29, GOAB Attorney General Simon met with Claimant A's attorney in Washington to discuss the Memorandum of Understanding.

¶ 10. (SBU) On November 22, 2006 GOAB Attorney General Simon requested confirmation of Claimant A's legal representation after another law firm claimed to represent it. Claimant A's attorney responded with a letter on January 11, 2007 that confirmed his representation of Claimant A and that the other firm was never given instructions to negotiate a global settlement on its behalf. Claimant A's attorney also informed the Attorney General that the other firm was retained solely to act in the matter which involved the rectification of the Register to reflect Claimant A as the registered proprietor of the property.

¶ 11. (SBU) On December 6, 2006, Claimant A's attorney wrote a letter to U.S. Ambassador Mary Ourisman, Assistant Secretary Thomas Shannon and the Department of Commerce, describing the alleged acts of harassment against Claimant A and requesting USG intervention.

¶ 12. (SBU) On January 22, 2007, an Embassy Bridgetown Officer traveled to Antigua and Barbuda to meet with Claimant A and obtain an update regarding the property dispute with the GOAB. Claimant A alleged that the majority shareholder recently was subject to incidents of harassment and threats, which she believes were GOAB's retaliatory measures for her lawsuits against the government. Claimant A described the incidents as damaged property, illegal break-ins, denied access to the Internet, and excessive charges for electricity

usage by the GOAB utility company.

¶13. (SBU) On February 6, 2007, Claimant A,s attorney contacted the State Department,s Office of the Legal Adviser to convey his frustration over several unsuccessful attempts to communicate with GOAB Attorney General Simon. On April 2, Claimant A,s attorney sent a letter requesting that the State Department intervene to help Claimant A obtain the return of the property at issue. Claimant A,s attorney described in his letter what he believed to be the GOAB,s failure to negotiate in good faith with Claimant A, Claimant A,s supposed inability to obtain justice in Antiguan courts because of alleged interference by the GOAB in judicial proceedings, and need for the USG to take action against the GOAB. Claimant A,s attorney also informed the Embassy that a hearing concerning the Land Register issue had been scheduled to be held in Antigua on March 6, but that GOAB Attorney General Simon allegedly prevented Claimant A,s U.K. counsel from appearing on its behalf.

¶14. (SBU) In June of 2007, the Privy Council ruled that the government could lay claim to the land under eminent domain laws in place in Antigua and reacquire the land. However, the Privy Council also ruled that the government could only exercise this power if it provided the owners their constitutionally guaranteed &fair compensation⁸ in a reasonable time.

¶15. (SBU) On April 12, 2009 the government provided, for the first time, an estimate of the properties value, estimating its value at US\$23.5 million. Claimant A,s valuation estimate by C.B. Ellis place the value of the property at US\$60 million.

¶16. (SBU) The last contact between the Embassy and Claimant A was on July 14 2008, when the CDA met with the claimant to discuss the status of her case. In the opinion of the Claimant the GOAB is waiting to find a buyer for the property before they will pay her claim.

¶17. (SBU) Claimant A: Natalia Querard. Querard is an American citizen, and has signed a Privacy Act Waiver.
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